

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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In the Matter of )  
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Local Telephone Competition and )  
Broadband Reporting )  
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WC Docket No. 04-141

**COMMENTS OF VERIZON<sup>1</sup>**

**Introduction and Summary**

The types of information currently collected by the Commission are sufficient for the Commission to understand the extent of broadband deployment and demonstrate that the broadband market is diverse and competitive. The proposed additional data sought by the Commission in its Notice of Proposed Rulemaking<sup>2</sup> are not necessary for the proper performance of the functions of the Commission and will have little practical utility. In addition, much of the proposed additions are not kept in the ordinary course of business nor readily available, or if available, would reveal competitively sensitive information to a highly competitive market. Rather than impose new regulations and burdens on a nascent market, the Commission should act on the data it currently has to fulfill the requirements of section 706 by removing existing regulatory burdens on broadband services. The Commission should also fill the gaps in its data

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<sup>1</sup> The Verizon telephone companies (“Verizon”) are the local exchange carriers affiliated with Verizon Communications Inc. identified in the list attached as Attachment A hereto.

<sup>2</sup> *Local Telephone Competition and Broadband Reporting*, WC Docket No. 04-141; *Local Competition and Broadband Reporting*, CC Docket No. 99-301, Notice of Proposed Rulemaking and Order on Reconsideration (rel. April 16, 2004) (“*NPRM*”).

program, especially in rural areas, by eliminating the reporting thresholds. Only by requiring all providers of broadband and local telephone service to report can the Commission obtain an accurate and complete picture of the extent of local telephone competition and broadband deployment to all Americans.

Finally, because of the highly competitive nature of the information being provided and the increasingly competitiveness of the broadband and local telephone markets, the Commission should retain its current practice with respect to the confidential treatment of data. Thus, it should not modify its procedures so that confidential information will automatically lose their sensitivity over time, nor take any action that could subject such data to a lower standard of confidentiality when sharing the data with states.

### **Discussion**

#### **I. The Types of Broadband Information Gathered By The Data Collection Program Are Sufficient to Enable the Commission To Perform its Functions and To Deregulate the Broadband Market.<sup>3</sup>**

In identifying one of the primary goals for its data collection program, the Commission stated in the *Data Gathering Order*<sup>4</sup> that, “This information collection program will also enable us to better assess the availability of broadband services such as high-speed Internet access, so that we can better satisfy our duty to encourage the deployment of advanced telecommunications capability as Congress directed us to do in section 706 of the 1996 Act.” *Data Gathering Order* ¶ 3. In addition to encouraging the deployment of broadband, “Gathering data about the development of competition for local telephone service and broadband deployment will help us

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<sup>3</sup> Although the program gathers data for both broadband deployment and local telephone competition, virtually all of the additional data sought by the Commission in the NPRM are specific to broadband. The only additional item sought by the Commission for local telephone competition is to require carriers to report the extent to which they are also the end user’s default interstate long distance carrier, which is addressed infra. *NPRM* ¶ 8.

<sup>4</sup> *Data Gathering Order*, published April 12, 2000 (65 FR 19675) (“*Data Gathering Order*”).

to achieve the complementary goal reflected in the 1996 Act of *reducing government regulation wherever possible.*” *Id.* at ¶ 5 (emphasis supplied).

Given the stated purposes of the data collection program, the Commission should not impose further burdens on providers by expanding the collection program, as the current types of data currently captured are sufficient to meet the Commission’s purpose of helping the Commission and the public understand the extent of local telephone competition and broadband deployment and to deregulate where necessary.

First, the current data collection program already provides the Commission with information that shows the extent of broadband deployment and that the market for broadband is competitive today. In the summary of data released by the Commission for the *ninth* data collection for high-speed internet access since the program began in 2000, the Commission demonstrates that it can track broadband growth and deployment by facilities-based providers of high-speed internet access who have 250 or more high-speed lines (or wireless subscribers) in each state. From these filers, the Commission can evaluate the penetration of their DSL, ADSL, cable, other wireline terrestrial, wireless, satellite and fiber lines into every zip code in every state and the number of competitive providers that are available in each zip code. This information, moreover, is available for high-speed lines, for advanced services lines and for lines that have speeds in excess of 2 mbps in both directions. In addition, with the currently reported information, the Commission can even evaluate the deployment of broadband across population densities, household incomes, and end-user type. And because of the biennial frequency of reporting, the Commission is able to track all of this data over the prior eight reporting periods to determine the rates of growth, penetration and potential for additional competition.

In addition to the information contained in the Form 477s, the Commission also has other information to assist it in determining the level of broadband deployment and thus to consider the proper regulatory treatment of broadband. Other sources of information include the information provided by carriers, trade associations, industry analysts, manufacturers, and states, among others, to the Commission in connection with the *Notice of Inquiries Concerning the Deployment of Advanced Telecommunications Capability to all Americans in a Reasonable and Timely Fashion and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996* (“706 Inquiries”). The Commission also receives broadband information from these and other entities in other annual assessments such as the *Annual Assessment of the Status of the Competition in the Market for the Delivery of Video Programming* and the *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive market Conditions With Respect to Commercial Mobile Services*. In connection with those inquiries and separately in the marketplace, investment banks and industry analysts generate a plethora of detailed data on broadband deployment.<sup>5</sup>

The current Form 477, supplemented by the other data that is constantly being provided and available to the Commission, has been and continues to be sufficient for the Commission to enable it to evaluate the progress of broadband deployment and to inform its policymaking.

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<sup>5</sup>See *Broadband Competition: Recent Developments, March 2004*, attachment to *ex parte* letter from Dee May, Vice President, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 01-337, 01-338, 02-33, and 02-52 (filed Mar. 26, 2004 (“*Broadband Competition Update*”).

Indeed, the current Form 477 report demonstrates that the nascent broadband market is already diverse and competitive in that:<sup>6</sup>

- Cable modem providers control nearly two-thirds of mass-market broadband lines and nearly 84% of mass-market lines offering data transmission at more than 200 kbps in both directions. When all technologies are considered, ILECs provide only about 35% of high-speed connections to end-users.
- Subscribership to high-speed services increased by 20% during the second half of 2003 to a total of 28.2 million lines (or wireless channels) in service.
- Reported high-speed connections to end users by means of satellite or terrestrial wireless technologies increased by 19% during the second half of 2003 and reported fiber optic connections to end-user premises increased by 5%.
- Providers of high-speed services via coaxial cable, DSL, other wireline technologies, optical, satellite, or other terrestrial wireless technologies serve subscribers in all 50 states, the District of Columbia and Puerto Rico.
- 99% of the country's population lives in the 93% of zip codes where a provider reports having at least one high-speed service subscriber and numerous competing providers report serving high-speed subscribers in the major populations centers of the country. In 78% of the nation's zip codes, more than one provider reported having subscribers.

Moreover, relying primarily on the Commission's own released data and the data available from other public sources, Verizon has previously shown that cable modem and DSL compete head-to-head nationwide, with cable modem more dominant in the broadband mass market.<sup>7</sup> In addition to this healthy competition, cable and telephone companies alike are facing increased competition from other intermodal competitors such as Fixed Wireless, Broadband over Power Lines, Satellite, 3G Mobile, and next-generation Fiber-to-the-Premises.<sup>8</sup>

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<sup>6</sup> Ind. Anal. & Tech. Div., Wireline Competition Bureau, FCC, *High-Speed Services for Internet Access: Status as of December 31, 2003* (June 2004).

<sup>7</sup> *Broadband Competition Update at 1-7.*

<sup>8</sup> See generally Comments of Verizon at 8-15, *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and*

Thus, the information currently available to the Commission through the existing Form 477 program and from other sources not only demonstrates that the broadband market has become increasingly diverse and competitive, but is also sufficient for the Commission to determine that broadband should be deregulated. In light of the information that it has already received, the Commission initiated at least four proceedings that focus on the regulatory treatment of broadband.<sup>9</sup> In fact, in two of these proceedings, the Commission had found information and data sufficient for it to issue rulings that eliminated and/or exempted broadband from certain regulatory treatment.<sup>10</sup> With the information that is already in the Commission's command, the Commission should now fulfill the purpose of its data gathering program and its

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*Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, GN Docket No. 04-54 (filed May 10, 2004).

<sup>9</sup> These proceedings include *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, 15 FCC Rcd 19287 (2000) (“*Cable Modem Notice*”); *Review of Regulatory Requirements for Incumbent LEC Broadband Services*; *SBC Petition for Expedited Ruling That it is Non-Dominant in its Provision of Advanced Services and for Forbearance From Dominant Carrier Regulation of These Services*, 16 FCC Rcd 22745 (2001) (“*Incumbent LEC Broadband Notice*”); *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*; *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 16 FCC Rcd 22781 (2001) (“*Triennial UNE Review Notice*”); and *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*; *Universal Service Obligations of Broadband Providers*; *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*; *1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, 17 FCC Rcd 3019 (2002) (“*Wireline Broadband NPRM*”).

<sup>10</sup> See *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, *Internet Over Cable Declaratory Ruling*; *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, 17 FCC Rcd 4798, ¶¶ 43-45, 54-55 (2002) (declining to extend and waiving *Computer II* obligations to cable modem service and declaring that cable modem service may be offered on a private carriage basis); *Triennial UNE Review Notice*, ¶¶ 273-77; 288-89; 255-63 (declining to require unbundled access for mass-market of fiber-to-the-home loops, hybrid loops and high-frequency portion of copper loops).

section 706 mandate to deregulate where necessary by concluding the remaining two proceedings and deregulating broadband provided by telephone companies.<sup>11</sup>

## **II. The Proposed Additional Data Sought by the Commission Have Little Practical Utility and Will Be Burdensome to Collect.**

Not only is it unnecessary for the Commission to expand the data collection program as the current information is sufficient for the Commission to deregulate broadband today, but the additional data proposed to be gathered will not further the Commission's functions while increasing the burden for carriers for several reasons.

### **A. Many of the Proposed Additions to Form 477 Are Not Necessary to the Commission's Data Collection Goals While Revealing Sensitive Competitive Information.**

In the *Data Gathering Order*, the Commission stated, "we seek to minimize the burdens imposed and thus, we limit this effort to specifically targeted information." *Data Gathering Order* ¶ 6. It concluded, "We believe that we have distilled our proposal down to that information which is *most essential to tracking the development of local competition and the deployment of broadband service to American consumers.*" *Id.* (emphasis supplied).

Unfortunately, much of the data that the Commission seeks to gather in the NPRM will simply not advance the Commission's stated purpose. Instead, the information would reveal a host of competitively sensitive information, particularly from telephone companies, that will put telephone companies at a competitive disadvantage.

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<sup>11</sup> Recognizing the burdens that such a program would impose on reporting companies, the Commission also promised that the data collection program would not continue any longer than necessary, stating "and most telling about our goals for this proceeding, we also take affirmative steps to ensure that the information collection does not outlive its usefulness by adopting a sunset provision that will terminate the reporting requirement after five years, unless the Commission affirmatively acts to extend it." *Data Gathering Order* ¶ 6. Although the Commission proposes to extend the data collection program for an additional five years beyond its current sunset of March 2005, Verizon submits that the Commission should only extend the data collection program for one more year and then reexamine its usefulness at that time.

For example, the Commission proposes to expand the data collection program to focus on the speeds at which broadband is deployed by requiring that filers break out the number of high speed connections for DSL from “other traditional wireline” and report the number of high speed connections in six “speed tiers.” The Commission currently requires filers to distinguish among three levels of speed – the total number of high-speed lines that deliver information in excess of 200 kbps in one direction, the total lines that deliver greater than 200 kbps in both directions, simultaneously, and the total lines that deliver greater than 2 mbs in both directions, simultaneously. (See Part I.A (a), (e), and (f)). Thus, the Commission already has sufficient information to distinguish between “high speed” services, “advanced” services and services in excess of 2 mbps.

By requiring another three higher levels of speeds, and by requiring filers to break out the number of symmetric DSL connections from “other traditional wireline,” the Commission has now gone beyond general deployment information to information that differentiates among certain classes of business customers. As the higher speeds and premium DSL connections are typically associated with larger businesses rather than with residential customers, disclosure of that information would reveal how many of those customers Verizon has and even who they are if reported by zip code. Moreover, the requirement to report the number of asymmetric and symmetric DSL customers from “other traditional wireline” customers is applicable only to telephone companies and need not be disclosed by other broadband providers such as cable. Thus, this request would not only unfairly require telephone companies alone to reveal sensitive information about their business customers, but it would also provide no basis for comparison or aggregation with other broadband providers because the technologies of those other providers are not capable of such distinction. In short, the proposed expansion to include higher speed tiers



and to differentiate asymmetric and symmetric from other traditional wireline connections is not necessary to further the Commission's goal of ensuring broadband deployment generally, will unfairly burden telephone companies alone by requiring the disclosure of competitive information and will result in numbers that are meaningless without the availability of similar information from other providers.

With respect to local telephone competition reporting, the Commission proposes to modify Form 477 by requiring local exchange providers to report the percentage of lines for which they are also the "default interstate long distance carrier"<sup>12</sup> and to further report that percentage for residential and small business customers. This information is similarly unnecessary to further the Commission's goal of reviewing *local* telephone competition and will instead reveal competitively sensitive information about the long distance market. First, default long distance carrier information is of very limited relevance to local competition, especially because market surveys estimate that U.S. households make 43 percent of their long-distance calls on wireless phones,<sup>13</sup> regardless of which company provides their wireline long distance service. For other providers of local and long-distance service such as VoIP, cable telephony and mobile wireless, this distinction is meaningless because there is no difference between the local and the long-distance service provider, nor the ability for the end user to select a different long-distance carrier.

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<sup>12</sup> Defined as the "carrier to which an interstate long-distance call is automatically routed, without the use of any access code by the end user." *NPRM*, Proposed FCC Form 477 Instructions at 9.

<sup>13</sup> Yankee Group News Release, *U.S. Consumer Long distance Calling Is Increasingly Wireless, Says Yankee Group* (Mar.23, 2004), at [http://www.yankeegroup.com/public/news-releases/news\\_release\\_detail.jsp?ID=PressReleases/news\\_03232004\\_cts2.htm](http://www.yankeegroup.com/public/news-releases/news_release_detail.jsp?ID=PressReleases/news_03232004_cts2.htm).

Secondly, because the long distance market is extremely competitive, the reporting of this information would reveal market information at a geographic level that could well be used by others to gain a competitive advantage. If Verizon were required to report this information, it would necessarily disclose how successful Verizon has been in gaining long distance presubscribers in individual local areas. The disclosure of this highly confidential market information could show subscribership penetration, targeted markets, and deployment strategies that would enable competitors to focus their marketing efforts and dollars. In short, the Commission's proposed addition of "default" long distance carrier information is not only meaningless, but would unfairly subject only certain providers of a highly competitive market to disclose critical competitive information.

**B. Proposed Changes to the Data Collection Program Also Provide Little Practical Value and Will Be Burdensome to the Filers.**

In recognizing the "burdens imposed" by the Data Gathering Order, the Commission also promised to "focus on easily-quantifiable and readily-available statistics that will reflect the level of service – local telephony and broadband – that is actually provided by incumbents and new entrants." *Data Gathering Order* ¶ 6. Many of the additional items sought by the Commission in this NPRM, however, are not kept in the ordinary course of business and are not readily available. Thus, a requirement to collect and report this information would not only greatly increase the burden to Verizon, but in many cases would not reflect the level of service actually being provided.

One such example is the Commission's proposal to further expand the types of information to be reported by zip codes. As Verizon informed this Commission in an earlier

proceeding regarding Form 477,<sup>14</sup> Verizon does not maintain operating data broken down by zip code. For Verizon even to report the zip codes in which there is any broadband deployment, as it currently does, Verizon must extrapolate that information by looking first at each central office within a state<sup>15</sup> for which there is a broadband customer and then list all zip codes that are represented by that central office. The Commission proposes to expand reporting by zip code further by requiring filers to report the number of connections by technology and by speed tiers for each zip code. Verizon currently has no way of readily quantifying the number of high-speed connections by technology in each zip code or to specify the number of connections by technology and by speed tiers in each zip code. As Verizon indicated in its Comments filed in prior proceedings, reporting by zip codes would require a redesign of its systems to accommodate these reports at a cost of millions of dollars<sup>16</sup> and would cost at least that much today. This request thus does not focus on easily quantifiable and readily available statistics and will be extremely burdensome to Verizon.

The Commission is also proposing that filers report their “best estimate of the *percentage* of mass-market end-user premises in the filer’s service area, in that state, to which high-speed DSL service is available over the filer’s own facilities” (*NPRM*, Appendix A ¶30). This request is problematic for several reasons. First, to the extent that the Commission is requesting filers to estimate the total availability of a particular type of connection that is offered by all providers,

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<sup>14</sup> See *In the Matter of Local Competition and Broadband Reporting*, CC Docket No. 99-301, Comments of Verizon at 3 (filed Mar. 19, 2001) (“*Verizon Comments*”).

<sup>15</sup> In some cases, Verizon’s systems contain information for several states without any way of breaking them out. In New York for example, Connecticut broadband data is included in the New York broadband numbers as Connecticut data is not tracked separately.

<sup>16</sup> *Verizon Comments* at 2 and Attachment 2.

such estimate will be arbitrary and meaningless because a filer such as Verizon would have no way of determining the availability of such a connection offered by others. To obtain any “estimate,” Verizon and other companies would have to analyze the same data sources currently available to the Commission, i.e. publicly available information from the other companies themselves. To the extent that the Commission is requiring filers to report on the percentage of “homes passed” in the state, the request is equally unavailing. Verizon cannot determine from its records whether any given premises can receive broadband service as that determination must be done on a premises-by-premises basis based on the distance from the premises to the central office and other technical factors.<sup>17</sup> Thus, a requirement for filers to provide this estimate would be unduly burdensome as well as result in little more than a guess.

Second, the Commission states that “mass market”<sup>18</sup> includes “small businesses,” which the Commission defines as including “end users if the end user has a broadband connection of a type (as indicated by, e.g. information transfer rates, features, and price) that is most typically associated with (i.e. primarily designed for, or marketed to) residential end users.” (*See, e.g.*, NPRM Proposed Instructions to Columns in Part I.A., Column B). Verizon’s records, however, do not differentiate its business customers by size alone, much less by the definition proposed by the Commission. Moreover, because the Commission’s definition of small business requires each company to make subjective determinations with respect to its business customers, and such determinations are further subject to different marketing campaigns by each company, the

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<sup>17</sup> *Verizon Comments, supra* at 5.

<sup>18</sup> The Commission instructs that, “Mass market end-user premises also include small business to the extent that you consider small business end users to be target customers for broadband services that you (including your affiliates), or your agents, primarily design for, or market to, residential end users.” *NPRM, Draft FCC Form 477 Instructions* at 7.

resulting data would be extremely subjective and lack any standards whatsoever. The results would do nothing to further the Commission's goals of developing a standard set of data.

Finally, the Commission seeks comment on whether the reporting instructions should be modified to require filers to categorize broadband connections according to the information transfer rates actually observed by end users. (*NPRM* ¶ 7). Such a modification would be equally superfluous to the Commission's data gathering goal of determining the *extent* of broadband deployment. It would also be equally meaningless as there is simply no way of tracking the transfer rates actually observed by end users. For DSL, the actual transfer rates observed by the end user vary based on the distance from the end user to the switch. Because the distance will be different for virtually every single end user, there is no way of measuring the actual transfer speeds observed, much less industry standards to report those speeds if such tracking were possible. For this reason, Verizon reports only the peak speeds that are capable on a particular technology and clearly discloses the fact that actual speeds may vary.

In sum, the Commission's proposed changes to Form 477 and its data collection program are not necessary to further the Commission's goals of encouraging broadband deployment generally to all Americans and of assessing local telephone competition, but instead would increase the reporting burden significantly for all filers. Imposing such an unnecessary regulatory burden to obtain reports of limited value is inconsistent with the Commission's own assurances in the Data Gathering Order that information would only be "specifically targeted," "essential" and focused on "easily quantifiable and readily-available statistics" as well as the deregulatory goals of the Act.<sup>19</sup>

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<sup>19</sup> Verizon supports the Commission's decision to eliminate the requirement to provide the percentage of total voice-grade equivalent lines that are in ILEC collocation switching centers. This information, like the ones noted above, was not available in the ordinary course of business,

### **III. The Commission's Data Collecting Program Must Require All Providers to File In Order to Ensure a Complete and Accurate Understanding of Broadband and Local Competition Markets.**

Despite the wealth of information that is available to the Commission today to enable the Commission to deregulate the broadband market, it is clear that if the goal is an accurate picture of the entire market, it needs to include all providers of broadband and local telephone service. Smaller providers who currently do not report today because they fall under the reporting thresholds<sup>20</sup> collectively can not only represent a significant piece of competition to cable and telephone companies, but are also likely to be the providers of broadband in the rural markets. In the latest release on high-speed services for internet access, the Commission conceded that “we do not know how comprehensively small providers, many of which serve rural areas with relatively small populations, are represented in the data summarized here.” *High-Speed Services for Internet Access: Status as of December 31, 2003* at 2. Currently, only companies that meet the thresholds need to report. As the Commission itself acknowledged, however, these thresholds miss several hundred small facilities-based providers, such as rural incumbent LECs, wireless Internet service providers, and municipalities. (*NRPM* ¶ 10). Verizon therefore supports the elimination of any thresholds for reporting as information from smaller providers is precisely the type of information the Commission has been directed to collect—information that will reveal the level of broadband deployment to *all* Americans, especially in the rural communities.

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was burdensome to collect and provided little probative value for the Commission or to advance the Commission's goals.

<sup>20</sup> For the current Form 477, the threshold for Broadband reporting is 250 or more facilities-based high speed lines (or wireless channels); the threshold for Local Telephone reporting is 10,000 or more voice-grade equivalent lines (or wireless channels) or 10,000 or more mobile telephone service subscribers.

In broadband, for example, there is broad competition from many providers using different technologies, including satellite, cable, WiFi/WiMax, mobile wireless (e.g. EVDO), fixed wireless, private line, fiber and DSL. WiFi/WiMax providers, many of whom are currently exempted from reporting because they are smaller providers that do not meet the threshold requirements for reporting, have experienced a recent explosion in growth.<sup>21</sup> And with the Commission's recent actions to increase the use of spectrum for unlicensed devices, many more smaller, entrepreneurial companies are expected to enter the market.<sup>22</sup> While each may provide only a limited number of broadband services, together they can constitute a significant percentage of broadband competition. And particularly in the rural areas with which the Commission is especially concerned, broadband is increasingly being provided by smaller providers.<sup>23</sup> Without the data from these providers, the Commission and the public will not be able to obtain a complete

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<sup>21</sup> Investors Business Daily reported, for example, that 15 million Wi-Fi consumer devices such as laptops were shipped, a 95% jump from 2002. *Investors Share the (Wireless) Wealth*, Investors Business Daily, May 20, 2004.

<sup>22</sup> See *FCC Proposes Rules To Facilitate Wireless Broadband Services Using Vacant TV Channels* (rel. May 13, 2004) ("These proposals advanced by the Commission are intended to allow the development of new and innovative types of unlicensed broadband devices and services for businesses and consumers").

<sup>23</sup> Chairman Powell recently summarized, "At the Commission's recent Wireless Broadband Forum, we heard many exciting stories about the explosive growth of wireless broadband all over the country—everything from Wi-Fi technologies to wireless internet service providers that are popping up, particularly in rural America. We're beginning to see greater uses of wireless mobile broadband products, such as EvDO coming into the market place. In the near future, the concept of "hot zones" will enter our vocabulary—regional areas where wireless broadband is not merely portable, but mobile." *Remarks of Michael K. Powell, Chairman, Federal Communications Commission At the Wireless Communications Association International*, June 3, 2004, Washington, D.C. See also, *FCC Chairman Michael Powell, FCC Commissioner Jonathan Adelstein, and South Dakota Governor Michael Rounds to Headline Presentation of WISP Technologies*, May 25, 3:30-5:30 PM (rel. May 21, 2004) ("FCC Chairman Powell, FCC Commissioner Jonathan Adelstein, South Dakota Governor Michael Rounds, and several representatives of wireless Internet service providers (WISP) will demonstrate how small, entrepreneurial WISPs are serving rural communities and using wireless broadband services to bring opportunities for greater economic development.")

picture of broadband deployment and will be continuously misled into thinking that telephone companies command a greater share of the market than that which exists and that they face minimal competition.

The same is true for local telephone data. Local telephone service, especially in the rural and smaller communities, is frequently served by competitive LECs and other smaller providers that may not meet the reporting threshold in a given state. Without their data, however, the Commission will not know the extent to which smaller companies have been able to service the rural communities, or to add another competitive choice to more densely populated areas. Indeed, in the latest Commission release on local telephone competition, the Commission conceded that it did not know the extent to which the total number of CLEC lines reported is understated because smaller carriers are not required to report.<sup>24</sup> Moreover, the Commission has noted that requiring smaller businesses to file will not be unduly burdensome to them because, as a practical matter, fewer numbers of questions will apply to their situations. *NPRM* ¶ 10.

In short, in order for the Commission's data collection efforts to provide any useful, meaningful data about the state of broadband deployment and local telephone competition, it is imperative that all providers that use spectrum or public rights of way be required to file. Only then will the resulting reports be accurate and complete and the Commission be able to fulfill its Congressional mandate of determining the level of deployment to all communities, including rural ones.

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<sup>24</sup> See *Local Telephone Competition: Status as of December 31, 2003*, Ind. Anal. And Tech. Division Wireline Competition Bureau, June 2004 at fn.3.



#### **IV. The Commission Should Continue Its Current Practice Of Maintaining the Confidentiality of the Raw Data Disclosed and Its Sharing of Data With States.**

The marketplace for broadband and local telephone competition services is highly competitive and is becoming increasingly more so. In this robust competitive environment, strategic information on subscribership penetration, geographic reach, type of customer served, and technologies deployed are trade secrets that should continue to be protected under the Commission's existing policy regarding the confidential treatment of Form 477 data. And precisely because of the highly competitive nature of the market, such data does not automatically lose their sensitivity after a set period of time. The Commission should not modify its existing policy to allow for the publishing of non-aggregated data after two, or any specified number of, years. The raw data would still be available to researchers, policymakers and analysts pursuant to requests under the Freedom of Information Act. Upon such petition, filers would be required to show that the information is still confidential and worthy of protection, or it would consequently be released. With a different policy of automatic disclosure, filers will be chilled from providing candid and detailed information regarding their highly sensitive competitive data.

Likewise, the Commission should continue its policy of sharing this data with states only pursuant to confidentiality agreements in which the states agree to treat the commercial information pursuant to the FCC's confidentiality rules and guidelines. Those rules should continue to specify that where state laws afford less protection than federal FOIA laws, the higher federal standard will prevail.

### Conclusion

The scope of the Commission's data collection program is sufficient to enable the Commission to perform its functions in tracking and reporting on the deployment of broadband and local telephone competition, and the Commission should act on that data now to deregulate broadband provided by telephone companies. Rather than increase the reporting burden by requiring the disclosure of additional, burdensome, and sensitive data, the Commission should instead complete its broadband and local telephone competition picture, particularly for rural areas, by eliminating the thresholds on reporting and requiring all providers to file.

Respectfully submitted,

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June 28, 2004

THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States  
GTE Midwest Incorporated d/b/a Verizon Midwest  
GTE Southwest Incorporated d/b/a Verizon Southwest  
The Micronesian Telecommunications Corporation  
Verizon California Inc.  
Verizon Delaware Inc.  
Verizon Florida Inc.  
Verizon Hawaii Inc.  
Verizon Maryland Inc.  
Verizon New England Inc.  
Verizon New Jersey Inc.  
Verizon New York Inc.  
Verizon North Inc.  
Verizon Northwest Inc.  
Verizon Pennsylvania Inc.  
Verizon South Inc.  
Verizon Virginia Inc.  
Verizon Washington, DC Inc.  
Verizon West Coast Inc.  
Verizon West Virginia Inc.